

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION FOR STAY OF
SECTION 69.605 OF THE COMMISSION'S RULES

Moultrie Independent Telephone Company

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March 29, 1999

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Figure 1. Schematic representation of the experimental design. The subjects were divided into two groups: the control group and the experimental group. The control group was divided into two subgroups: the control group and the control group. The experimental group was divided into two subgroups: the experimental group and the experimental group.

1. Introduction.
2. Moultrie is a rural independent local exchange carrier (ILEC) serving 806 access lines in central Illinois. As required by Section 69.605 of the Commission's rules, 47 C.F.R. § 69.605, Moultrie has submitted its 1997 costs to NECA for the purposes of compiling rates for small telecommunications carriers. NECA returned Moultrie's 1997 cost study claiming that the study was not prepared in accordance with the Commission's rules. NECA asserts that certain affiliate transactions Moultrie undertook in 1997 violated the Commission's Section 36 separation rules. NECA has informed Moultrie that it must prepare a revised cost study, or NECA will penalize Moultrie by using the 1996 cost study previously submitted by Moultrie.

3. Moultrie submits that its 1997 cost study was prepared in accordance with the Commission's rules and that its cost study is valid thereunder. However, Moultrie believes there is a patent ambiguity between the Commission's separation rules, 47 C.F.R. §§ 36.2(a) and (c), and its accounting rules, 47 C.F.R. §§ 32.27(a) - (c). Moultrie prepared its cost study using its best judgement in face of the ambiguity engendered by the rules. Moultrie believes that the Commission must address the contradiction in its rules before Moultrie is subjected to the penalty of having to abide by a revised cost study through NECA -- and the consequential economic harm and distortion of its rates.

4. Accordingly, Moultrie requests the Commission issue a stay of Section 69.605(a) of the Commission's rules pending ruling on the accompanying Petition for Declaratory Ruling. Such stay would preserve the status quo until Moultrie and interested parties have an opportunity to present their case to the Commission. Grant of the stay would be in the public interest because the difference between Moultrie's and NECA's interpretation of the Commission's rules will significantly impact many of the carriers that NECA represents.

II. Moultrie Meets the Commission's Requirements for the Grant of a Stay.

5. For the Commission to grant a stay of its rules, a petitioner must demonstrate that: (1) it is likely to prevail on the merits of its petition for review; (2) it will suffer irreparable harm in the absence of a stay; (3) a stay will not injury other parties; and (4) a stay is in the public interest.¹

1. *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F2d 921, 925 (DC Cir. 1958), as modified in, *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F2d 841, 843 (DC Cir. 1977).

A. **Moultrie Is Likely to Prevail Upon the Merits of its Petition for Declaratory Ruling.**

6. NECA contends that Moultrie has violated Section 36.2 of the Commission's separation rules by including certain affiliate transactions in its cost study. However, inclusion of such transactions are required pursuant to section 32.27 of the Commission's accounting rules. See, 47 C.F.R. § 32.27. Specifically, section 36.2 requires a carrier to include property transferred to an affiliate and related expenses, and exclude rent paid to the affiliate for use of the transferred property from the carrier's accounts. 47 C.F.R. §§ 36.2(a) and (c). Section 32.27 requires carriers to include assets transferred to an affiliate and services provided to a carrier from an affiliate in the *carrier's* accounts. 47 C.F.R. §§ 32.27 (a)-(c). Moultrie has sought to follow the Commission's accounting rules, which appear to be contrary to the Commission's separation rules. To seek clarification of this patent discrepancy, Moultrie has submitted a Petition for Declaratory Ruling with Commission. Upon a plain reading of the FCC's rules, Moultrie's interpretation of the rules is correct, and thus, Moultrie will prevail upon the merits of its Petition for Declaratory Ruling.

B. **Moultrie Will Be Irreparably Harmed Should this Motion for Stay Be Denied.**

7. In returning Moultrie's 1997 cost study, NECA stated that if a new cost study to its satisfaction is not submitted by the "cost lock" date for determining cost data for 1997, NECA will use the cost study submitted by Moultrie in 1996. The "cost lock" date is March 29, 1999. Therefore, Moultrie needs immediate relief.

8. Use of the 1996 cost study would inaccurately depict the state of Moultrie's investments in its facilities and transactions undertaken in 1997, and this will negatively affect Moultrie's profits. Should NECA be allowed to arbitrarily replace Moultrie's 1997 cost study

with data from 1996, Moultrie will lose the economic and efficiency benefits gained by its transactions with its affiliate, as reflected in the 1997 cost study. Hundreds of thousands of dollars are at issue. Moultrie will be irreparably harmed if NECA is allowed to apply 1996 cost information to Moultrie's 1997 business activities.

C. Grant of a Stay Will Not Injure Other Parties.

9. The grant of the requested stay will not injure other parties. In fact, if the Commission determines that the separation and accounting rules are contradictory, as Moultrie contends, all NECA associated carriers will benefit from a subsequent clarification by the Commission. No parties, including NECA, will be injured if NECA is required to adhere to the requested stay. NECA may proceed with its cost analysis of other carriers and return to Moultrie's cost analysis after the Commission has the opportunity to rule on Moultrie's accompanying Petition for Declaratory Ruling.

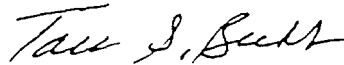
D. Grant of a Stay in this Matter Is in the Public Interest.

10. It would be contrary to the public interest to require a small carrier, in fact any carrier, to be punished by inconsistent Commission rules. Clarification of the Commission's rules is required. If Moultrie is not allowed to use its 1997 cost study, it will face a considerable economic loss, and that economic loss would have to be passed on to Moultrie's rural customers. It would be inequitable and against the public interest for the FCC to allow NECA to proceed with its arbitrary interpretation of the Commission's rules and require Moultrie, and necessarily its customers, to forfeit the financial benefits it sought to gain through its affiliate transactions.

III. Conclusion.

11. Grant of the requested stay in the instant matter is necessary and proper. Moultrie has met the Commission's requirements for such a grant. Therefore, Moultrie respectfully requests that the Commission grant this Motion for Stay of Section 69.605 of the Commission's rules until the Commission has the opportunity to review Moultrie's accompanying Petition for Declaratory Ruling.

Respectfully submitted,
Moultrie Independent Telephone Company



By its Counsel
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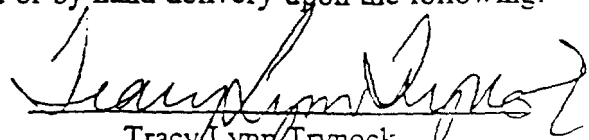
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March 29, 1999

njh:MOT_STAY2.WPD[3/26/99]

CERTIFICATE OF SERVICE

I, Tracy L. Trynock, hereby certify that on this 29th day of March, 1999, copies of the foregoing "Motion for Stay of Section 601.605 of the Commission's Rules" have been served by first-class United States mail, postage pre-paid or by hand delivery upon the following:


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March 12, 1999

To: Larry VanRuler (TTC) via fax
Steve Bowers (Moultrie) via fax
John Boehm (NECA)
From: Roberta Alvir (NECA)
Subject: Moultrie Telecom. 1997 Cost Study Re-run

Pt. 36.2

"In the case of property rented from affiliates, the property and related expenses are included with, and the rent expenses are excluded from, the telephone operations of the company making the separation."

On March 1, 1999 I provided you with documentation (FCC Pt. 36.2) showing that Moultrie's 1997 Cost Study was not prepared in accordance with FCC Rules and Regulations. A revised 1997 Cost Study must be submitted to NECA and POOLED before March cost lock.*

The revised study should :

- REMOVE lease costs
- INCLUDE property and related expenses

* If a Cost Study reflecting compliance with the aforementioned FCC rule is not received before March 25, 1999 - your 1997 settlement amounts will be overridden and will revert back to 1996 amounts.